

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of)
Leslie S. Marco et al.) Group: 3721
Serial No.: 10/681,524)
Filed: October 8, 2003)
Title: TOP LIFT CARRIER AND METHOD OF) Examiner: Tawfik, Sameh
MANUFACTURE THEREFOR)

APPEAL BRIEF OF APPELLANTS

MS Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This appeal is taken from the decision of the Examiner, dated January 12, 2010, finally rejecting claims 1-7. Appellants timely filed a Notice of Appeal in this matter on April 12, 2010, along with a Pre-Appeal Brief Request for Review. A Notice of Panel Decision from Pre-Appeal Brief Review was dated May 17, 2010, and this Brief is being filed within the time period established by the Panel Decision.

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Illinois Tool Work Inc., a corporation organized and existing under the laws of the State of Illinois, Country of US, which owns the entire interest in this patent application as set forth in the underlying claimed invention, by way of an Assignment recorded on October 8, 2003, at Reel 014597 and Frame 0484.

II. RELATED APPEALS AND INTERFERENCES

No related Appeals or Interferences are known to the Appellants.

III. STATUS OF CLAIMS

Pending: 1-13

Canceled: 14-19.

Allowed: 8-13

Objected To: none

Rejected: 1-7.

Withdrawn from Consideration: none.

On Appeal: 1-7.

A clean copy of claims 1-7, all the claims under appeal, is included as an Appendix to this brief.

For convenience a clean copy of allowed claims 8-13 is also included.

IV. STATUS OF AMENDMENTS

No amendment was filed in this case subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates generally to packaging arrangements for groups of containers such as bottles or cans, and, more specifically, to plastic carriers having arrays of stretchable loops for engaging and holding individual containers.

The appealed claims are copied below in annotated form, with reference numbers inserted for corresponding elements shown in the drawings, and with specific references to descriptions in the specification by page and line number.

1. A method (100) of making a container carrier (10), comprising steps of:
providing a handle sheet (102) and a carrier sheet (104); (page 7, line 25)
positioning the handle sheet (102) on at least a portion of the carrier sheet (104); (page 8, lines 22-25)
connecting the handle sheet (102) and the carrier sheet (104) along a line of attachment (22, 24; 22A, 24A; 22B, 24B); (page 6, lines 22-24 and page 7, lines 26-28)
forming a container holding portion (20) only in the carrier sheet (104) (page 8, lines 17-19), including forming first and second rows (40, 50, 60) of container receiving apertures in the carrier sheet (104) on opposite sides of the line of attachment after said steps of positioning and connecting;
forming a handle portion (16) only in the handle sheet (102) (page 8, lines 17-19), including forming holes (142, 144, 146, 148) in the handle sheet (102) simultaneously with forming the first row of apertures (“defined by loops 42, 44, 46, 48”, page 9 line 13) (step described on page 9, lines 13-16); and
said step of forming holes in the handle sheet (102) and said forming the first row of container receiving apertures in the carrier sheet (104) being performed by cutting through overlying portions of said handle sheet (102) and said carrier sheet (104) and thereby forming said holes of the handle sheet (102) and said first row of container receiving apertures of the carrier sheet (104) in overlying arrangement and in substantially the same configurations one over the other. (Page 9, lines 13-22.)

2. The method (100) of claim 1, said step of connecting performed by creating a substantially continuous weld (22A, 24A; 22B, 24B) between said sheets (102, 104). (Page 8, lines 26-28.)

3. The method (100) of claim 2, including connecting the handle sheet (102) with the carrier sheet (104) along first and second spaced lines of attachment (22A, 24A; 22B, 24B); and thereafter removing a portion (124A, 124B) of the handle sheet (102) between the first and second spaced lines of attachment (22A, 24A; 22B, 24B) to define first and second handle sheet portions (16A 18A; 16B, 18B) separate from each other. (Page 9, lines 3-6.)

4. The method (100) of claim 3, including forming the first row (40) of apertures between one of the lines of attachment (22A, 24A; 22B, 24B) and an edge of the carrier sheet (104), forming the second row (50) of apertures between the lines of attachment (22A, 24A; 22B, 24B); and forming a third row (60) of apertures in the carrier sheet (104) on an opposite side of the other of the lines of attachment (22A, 24A; 22B, 24B) from the second row (50) of apertures. (Page 7, lines 6-17; and Page 9, lines 13-22.)

5. The method (100) of claim 4, including forming holes (162, 164, 166, 168) in the handle sheet (102) simultaneously with forming the third row (60) of apertures (defined by loops 62, 64, 66, 68) in overlying arrangement by cutting through overlying portions of said handle sheet (102) and said carrier sheet (104). (Page 9, lines 16-20)

6. The method (100) of claim 5, including forming first and second handles (26A, 28A, 26B, 28B) in said handle sheet (102) outwardly of the holes (142, 144, 146, 148; 162, 164, 166, 168) with respect to said first and second lines of attachment (22A, 24A; 22B, 24B). (Page 8, lines 22-25.)

7. The method (100) of claim 6, including forming a merchandising panel (180) simultaneously with forming at least one of the first and second handles. (Page 9, line 24 through page 10, line 4.)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-7 are unpatentable under 35 U.S.C. § 112, first paragraph for failing to comply with the enablement requirement, as stated in the final rejection, or for reciting new matter as stated by the Examiner in an Interview Summary dated May 17, 2010.

2. Whether claims 1-7 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,868,659 (Slomski) in view of U.S. Patent No. 5,487,465 (Broskow).

VII. ARGUMENT

A. CLAIMS 1-7 ARE PATENTABLE UNDER 35 U.S.C. § 112.

In the final Office Action dated January 12, 2010, claims 1-7 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Following Appellants' filing of the Notice of Appeal and a Pre-Appeal Brief Request for Review, in a telephone call to Appellants' attorney on May 17, 2010, and in a subsequent Interview Summary dated May 17, 2010, the Examiner has sought to explain it to be "a new matter issue."

Appellants submit that claims 1-7 fully comply with all requirements of 35 U.S.C. § 112 and that the recitation of "only" is both enabled by and consistent with the disclosure, including the filed specification and drawings of the invention.

1. The Examiner's Differing Characterizations of the Rejection

In the final office action, the Examiner states that the claims fail to comply with the enablement requirement in that the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner specifically refers to the limitation in claim 1, lines 5 and 8; "forming a container holding portion only in the carrier sheet" and "forming a handle portion only in the handle sheet" as not being described in the filed disclosure or specification in a clear way to be understood. The Examiner then refers to the filed specification, from the last line of page 3 through the end of the first paragraph on page 4, which refers to "forming holes in the first handle portion similarly shaped to the first row of apertures" and "forming holes in the second handle portion similarly shaped to the third row of apertures" and as further supported in the filed drawings, Figs. 2-4 via holes formed in the handle sheet similarly to the holes formed in the

carrier sheet. The Examiner then concludes that this is contradictory to the claim language using a limitation "only", as it seems like a container holding portion and handle portion have been formed similarly/simultaneously in both sheets (the carrier and handle sheets) not as claimed "only in the carrier sheet" nor "only in the handle sheet".

In a telephone call to Appellants' attorney, the Examiner attempted to explain the rejection differently. This explanation was captured in the Examiner's Interview Summary dated May 17, 2010, in which the Examiner states:

"the examiner draws applicants attention that in the previous FR of 20100111, the examiner mistakenly pointed out to form paragraph relating to "enablement" as a 112 1st. it should have been a new matter issue. As it has been explained the new added limitations "only" is not consisting (sic) with the filed specification and drawings of the invention."

2. The Recitations in Claim 1 Identified in the Rejection

The full recitations to which the Examiner referred in claim 1 when making the rejection under 35 USC § 112 are as follows:

forming a container holding portion only in the carrier sheet, including forming first and second rows of container receiving apertures in the carrier sheet on opposite sides of the line of attachment after said steps of positioning and connecting;

forming a handle portion only in the handle sheet, including forming holes in the handle sheet simultaneously with forming the first row of apertures;

Appellants submit that these recitations are fully supported by and fully consistent with both the disclosure and the drawings as originally submitted in the application. Accordingly, neither a rejection for lack of enablement as stated in the Final Office Action nor a rejection based on "new matter" as stated in the Examiner's Interview Summary is appropriate.

3. The Recitation of "only" in Claim 1 is Fully Enabled and Supported by the Specification and Drawings as Filed

Paragraph [30] of the application as filed generally describes carrier 10, which includes a first handle portion 16 and a second handle portion 18 joined to a container holding portion 20 along first and second lines of attachment 22 and 24, commonly referred to as "welds". (Page 6, lines 22-24.)

Paragraph [31] of the application as filed describes handle portions 16 and 18 of carrier 10. Handle portions 16 and 18 are described to include first and second handles 26 and 28 and first and second suspension portions 30 and 32 interconnecting the handles with container holding portion 20. (Page 7, lines 1-5)

Paragraph [32] of the application as filed describes container holding portion 20 of carrier 10. Container holding portion 20 has a first row 40 of container holding apertures formed by loops 42, 44, 46 and 48, each adapted to hold a container 14 therein. (Page 7, lines 10-12.) Container holding portion 20 further includes a second row 50 of container holding apertures formed by loops 52, 54, 56 and 58 and a third row 60 of container holding apertures formed by loops 62, 64, 66 and 68. (Page 7, lines 12-17.)

Paragraph [34] begins describing a method 100 of making carriers 10 with reference to Fig. 4. The method includes providing a handle sheet 102 and a carrier sheet 104, which can be of the same or different materials. (Page 7, lines 24-27.)

Paragraph [36] then states as follows:

An advantage of the present invention is that carrier sheet 104 can be standard, substantially transparent, low-density polyethylene commonly used for carriers of the type, and handle sheet 102 can be provided as a different material, perhaps of heavier weight or thickness, or of a different color. Since handle portions 16 and 18 are formed in a sheet different from that of container holding portion 20, each can be optimized for its particular use. (Page 8, lines 14-19. Emphasis added.)

Subsequent paragraphs [37] through [41] describe the method in greater detail, but entirely consistent with the above statement that “handle portions 16 and 18 are formed in a sheet different from that of container holding portion 20...” Figs. 1-3 show carrier 10, and Fig. 4 shows multiple carriers 10 being made by method 100 consistent with the above statement that “handle portions 16 and 18 are formed in a sheet different from that of container holding portion 20...” Figs. 1-4 show all of the features of carrier 10 and all of the limitations consistent with the method recited in claim 1, Paragraph [42] and Figs. 5 & 6 describe and show a carrier 200 and a manufacturing method 212 for making multiple carriers 200 consistent with the above statement that the handle portions are formed in a sheet different from that of the container holding portions.

Method 100 includes **positioning the sheets 102, 104 “on each other in overlying manner”** (page 8 line 22, shown in Fig. 4); and **“connecting together sheets 102 and 104...by**

welding..." (Page 8, line 26, shown in Fig. 4). Perforation lines are provided at specific locations in carrier sheet 104 and in handle sheet 102 for removing portions of each for separating individual carriers from one another and to separate the two handle portions of each carrier (page 8, line 28 through page 9, line 6), all consistent with the above statement that the handle portions are formed in a sheet different from that of the container holding portions.

Welded sheets 102, 104 are described to be "processed through a punch press or die cutter, in known manner, for forming the configuration of carrier 10, including first and second handle portions 16 and 18, and rows of apertures 40, 50 and 60 in container holding portion 20 (page 9, lines 6-10). As illustrated in the sequential steps in Fig. 4 for manufacturing carriers 10 shown in more detail in Figs. 1-3, first and second handle portions 16 and 18 are formed in handle sheet 102 and container holding portion 20 including rows of apertures 40, 50 and 60 are formed in carrier sheet 104.

The procedure for forming the apertures of the container holding portion in the carrier sheet simultaneously with forming holes of the handle portions in the handle sheet is described in paragraph [39]. As stated in Paragraph [39]:

"Simultaneously with forming apertures defined by loops 42, 44, 46 and 48 in first row 40 (Fig. 3) a similarly configured row 140 of holes 142, 144, 146 and 148 (Fig. 2) is formed in first handle portion 16 as the cutting equipment shears through overlying sheets 102 and 104. Similarly, simultaneously with forming apertures defined by loops 62, 64, 66 and 68 in third row 60 (Fig. 3) a similarly configured row 160 of holes 162, 164, 166 and 168 (Fig. 2) is formed in second handle portion 18 as the cutting equipment shears through the overlying sheets 102 and 104. With strip 124 having been

removed, forming apertures defined by loops 52, 54, 56 and 58 in second row 50 is performed without impact on handle sheet 102. (Page 9, lines 13-22.)

As clearly stated in paragraph [36] regarding the structure of the carrier; and, as clearly described in paragraph [39] regarding the method by which the carrier is made; and, as clearly shown in the drawings of the carrier and the steps of the method of making the carrier; handle portions 16 and 18 are formed only in the handle sheet 102 and container holding portion 20 is formed only in the carrier sheet 104. Handles 26 and 28 and suspension portions 30 and 32, including the various holes 142, 144, 146 and 148 in the rows of holes 140, and the various holes 162, 164, 166 and 168 in the row of holes 160 are formed in handle sheet 102. None of the structures described for container holding portion 20 are formed in handle sheet 102. No container receiving apertures are formed in handle sheet 102. Conversely, the various container receiving apertures formed by loops 42, 44, 46 and 48 in first row 40; loops 52, 54, 56 and 58 in second row 50 and loops 62, 64, 66 and 68 in third row 60 are all formed in carrier sheet 104. None of the structures described for handle portions 16 and 18 are formed in carrier sheet 104.

Accordingly, as clearly described particularly in paragraphs [36] and [39], and as clearly shown in the drawings, the container holding portion including first and second rows of container receiving apertures defined by the aforementioned loops is formed only in the carrier sheet; and the handle portion including holes is formed only in the handle sheet.

One skilled in the art would clearly understand from the written description and drawings how a carrier is made to include a container holding portion only in a carrier sheet and a handle portion only in the handle sheet even though apertures of the container holding portion and

holes of the handle portion are similarly configured and simultaneously formed by cutting through overlying portions of the handle sheet and the carrier sheet.

The claims are not contradictory to or different from the description in the specification. The claims recite that the handle portion is formed only in the handle sheet and the container holding portion is formed only in the carrier sheet. The written description describes a method of making and a carrier made by the method in which a handle portion is formed only in the handle sheet and a carrier portion is formed only in the carrier sheet even though the apertures and holes of each are simultaneously formed in overlying fashion by cutting equipment shearing through the overlying sheets. Thus, the claims and written description are completely consistent with each other.

Reciting that a handle portion is formed only in a handle sheet, and a carrier portion only in a carrier sheet does not preclude holes in the handle sheet and apertures in the carrier sheet being of similar configuration. The specification describes it, the drawings show it and the claims recite it in the present application. A row of holes as a suspension portion of a carrier handle portion being shaped similarly to container receiving apertures defined by loops of the container holding portion does not necessarily make the holes of the handle portion suitable for receiving and retaining containers. The overall configuration of the carrier can be such that containers are not held by the handle portion even though the holes of the handle portion are similarly shaped to the holes of the container holding portion. For example, and not limitation, the specification describes an embodiment in which handle sheet 102 and carrier sheet 104 are provided from different materials (paragraph [36]), the carrier sheet being sufficiently stretchable to surround and retain containers. The handle sheet may have different physical properties not suitable for retaining containers. Further, the handle sheet may include outer structure by which the carrier is grasped, which can

affect stretching of the holes formed in the handle portion such that the handle portion is not properly suitable for retaining containers. The shape of the holes alone does not render them to be container receiving apertures.

Accordingly, it is respectfully submitted that the rejection under 35 USC 112 is inappropriate and should be withdrawn by the Board. The recitations in claim 1 of "forming a container holding portion only in the carrier sheet" and "forming a handle portion only in the handle sheet" is fully described in the disclosure as filed and is clearly shown in the drawings as filed. There is no failure to comply with the enablement requirement, nor is there any issue of new matter. Accordingly, the Examiner's rejection as stated in the final office action and as explained or modified in the interview summary is inappropriate and should be reversed by the Board.

B. CLAIMS 1-7 ARE PATENTABLE UNDER 35 U.S.C. § 103 over the Teachings of US 5,868,659 (Slomski) In View of US 5,487,465 (Broskow).

In the final Office Action dated January 12, 2010, claims 1-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,868,659 (Slomski) in view of U.S. Patent No. 5,487,465 (Broskow). Appellants submit that claims 1-7 are not taught, disclosed or suggested by the cited references; alone or in combination, and are therefore in condition for allowance.

1. The Teachings of the Cited References

a.) Slomski teaches, "The carrier 20 is formed from a container engaging portion 24 and a handle portion 26 which are manufactured separately from each other by stamping each out of a planar sheet of material and are joined together to form the completed carrier 20..." (Column 3, lines 41-45). Slomski further states, "Each web 52, 56 is then punched separately by a punch press

die 60, 62 of known construction to form separate continuous strips of container engaging portions 24 and handle portions 26." (Column 5, lines 19-22.) Slomski goes on to describe, "The handle portion 26 can be readily changed to accommodate unique customer designs..." (Column 5, lines 33 - 35.) Slomski continues, "Thereafter, each handle portion 26 is moved by suitable means to join with the respective container engaging portion 24 by inserting the tab portions 46 into and through the slots of 38 between the rows of apertures 28..." (Column 5, lines 43-46.) Slomski clearly teaches punching the container engaging portion and the handle portion separately before attaching the carrier and handle sheets together. In the teaching of Slomski, punching the handle and container engaging portions is performed first, and attachment of the handle portion to the container engaging portion is performed thereafter.

b.) Broskow teaches a carrier "...formed by joining two separate sheets of plastic material together at the seam or joined portion 26. However, it is within the scope of the invention that a single sheet of plastic material may be used to form the carrier by folding the sheet in half and applying a layer of plastic or otherwise fusing the sheets together to form the joined portion 26." (Column 3, lines 40-46.) Also, "If the carrier 20a is made of two separate sheets of plastic material, which is the preferred embodiment, the handle portion 46 also includes the two separate sheets of plastic material. Alternatively, if the carrier 20a is made out of a single sheet of plastic material, the handle portion 46 is formed when the sheet is folded in half. In either method, the handle portion 46 includes two side portions 50, 52." (Column 3, lines 60-66.) Further, "The carriers 20a are formed in a continuous method as described hereinbelow and as illustrated in FIG. 5. Preferably, a first sheet 58 of plastic material and a second sheet 60 of plastic material are used. The first sheet 58 and the second sheet 60 are combined together." (Column 4, lines 30-33.) The carrier of Broskow is

formed from two sheets or from a folded sheet, but in either case a sheet includes both a handle portion and a container engaging portion, with the handle portion having apertures different from the apertures of the container engaging portion (see Broskow drawings). If two sheets are used, each sheet includes both a handle portion and a container engaging portion. If one sheet is used folded upon itself, a handle portion and a container engaging portion are formed in the single sheet. Broskow teaches a carrier that joins two separate sheets of material together, or uses a single sheet folded in half. Container engaging portions 22, 24 are joined by a seam or joined portion 26 at 25 and freely depend therefrom (column 2, lines 39-48). In the preferred method of forming the carriers, sheets 58 and 60 are combined together, and apertures 32 are formed (column 4, lines 30-48).

Thus, as can be seen clearly from Figs. 2, 4 and 5 of Broskow, each of the sheets disclosed by Broskow forms a part of the container engaging portion and a part of the handle. Stated another way, the container engaging portion is formed in each of the sheets and the handle portion is formed in each of the sheets. Broskow teaches a process for forming a carrier in which both a handle portion and a container engaging portion are formed in each sheet. A stamping die 64 punches both sheets 58, 60 simultaneously to form carrier 20a. Separate container engaging portions 22, 24 are formed in sheets 58, 60, respectively. Each of the sheets 58, 60 forms a part of the container engaging portions (22 or 24) and a part of the handle (column 2, lines 39-48 and column 3, lines 60-66).

2. Statements Made By The Examiner About The Teachings of the Slomski and Broskow References Are Inaccurate.

In the analysis of the references, the Examiner applies the terms from the pending claims inaccurately to the teachings of the prior art. In discussing claim 1, the Examiner states that Slomski teaches “the holes and the first row of apertures formed in substantially the same

configurations, see for example (Fig. 4).” However, in looking at Figs. 3 and 4 of Slomski, no holes in the handle portion 26 of Slomski are shaped in any way similarly to the container receiving apertures of the container engaging portion 24. Appellants respectfully submit that such a structure is clearly not taught by Slomski in which the container receiving apertures are shown to be substantially rectangular openings in the carrier sheet, and the holes in the handle sheet are of two types, both long and narrow, with the outer holes being more or less a flattened L-shape and a central hole being an elongated, thin slit. Clearly the apertures in the carrier sheet and the holes in the handle sheet of Slomski are not “formed in substantially the same configurations” as recited in appealed claim 1. Accordingly, Slomski does not teach what the Examiner states is taught by Slomski, and therefore the rejections based thereon are not properly supported.

In discussing the teaching of Broskow with respect to claim 1, the Examiner states that the Broskow process teaches “cutting through overlying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlying arrangement see for example (Fig. 5; via stamping die 64 cutting through overlying portions of the handle sheet/portion and the carrier sheet/portion to form holes of container receiving apertures and holes in the handle portion).” (Office Action dated January 12, 2010; page numbered 4, lines 5-8).

It is respectfully submitted that the characterization of Broskow put forth by the Examiner is not correct, and that Broskow does not teach what the Examiner says it teaches. Broskow does not teach a separate handle sheet and a separate carrier sheet. Instead, Broskow teaches two identical sheets, each having a handle portion and a container receiving portion. While the sheets in the Broskow teaching are cut in overlying fashion, a carrier portion of one sheet overlies a carrier portion of the other sheet, and a handle portion of one sheet overlies a handle portion of the other sheet. Accordingly, contrary to the Examiner’s statement, Broskow does not teach cutting

through overlying portions of the handle sheet and the carrier sheet to form handle portion holes and rows of apertures in overlying arrangement. No where in the teaching of Broskow do container receiving apertures overlie holes in a handle sheet, and the holes of the handle portion and the apertures of the carrier portion are not of similar shape in any way. Accordingly, Broskow does not teach what the Examiner states, and the rejections based thereon or not properly supported.

3. Claim 1 Recites An Invention Different From The Cited References:

Contrary to the combined teachings of Slomski and Broskow, claim 1 as amended recites a method of making a container carrier in which a container holding portion is formed only in a carrier sheet and a handle portion is formed only in a handle sheet by positioning the handle sheet on at least a portion of the carrier sheet and cutting through overlying portions of the handle sheet and the carrier sheet and thereby forming holes in the handle sheet and a first row of container receiving apertures in the carrier sheet in overlying arrangement and in substantially the same configurations.

In contrast to the teachings of Slomski and Broskow, claim 1 of the present application recites in part:

“said step of forming holes in the handle sheet and said forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlying portions of said handle sheet and said carrier sheet and thereby forming said holes of the handle sheet and said first row of container receiving apertures of the carrier sheet in overlying arrangement and in substantially the same configurations one over the other.”

Claim 1 recites a method for making a container carrier having specific steps and sequences not taught by the prior art, to achieve an improved carrier. Neither Slomski, Broskow nor the combination thereof teaches a process or a carrier in which a separate and distinct handle sheet and a separate and distinct carrier sheet are provided in overlying arrangement, and wherein container receiving apertures in the discrete carrier sheet and holes in the discrete handle sheet are formed one above the other and in substantially the same configurations. Slomski does not teach apertures in a carrier sheet and holes in a handle sheet that are configured in any way similar one to the other. Broskow teaches two sheets each having a portion thereof forming a carrier portion and a second portion thereof forming a handle portion. While the sheets overly, container receiving apertures and handle portion holes do not overlie each other. Further, Broskow also fails to teach container receiving apertures in one sheet similar to holes in the handle portion of the other sheet.

Neither reference alone or in combination teaches the very distinct method steps and sequences recited in claim 1, to provide a carrier that can be produced efficiently while using materials that can be different for both the carrier sheet and the handle sheet to optimize the performance of each.

Claim 1 contains still other limitations clearly different from the teachings of Slomski and Broskow alone or in combination. Claim 1 recites a method that includes steps of positioning a handle sheet on a carrier sheet, connecting the sheets, and **“forming a container holding portion only in the carrier sheet, including forming first and second rows of container receiving apertures in the carrier sheet on opposite sides of the line of attachment after said steps of positioning and connecting...”**. Accordingly, it occurs after the two sheets are connected together. Since forming a handle portion is performed **“simultaneously with forming the first row of apertures”** it is clear that all punching occurs after the two sheets are connected together. Claim 1

further recites, “forming a handle portion only in the handle sheet, including forming holes in the handle sheet simultaneously with forming the first row of apertures, the holes and the first row of apertures formed in substantially the same configurations. ”

Positioning and connecting two sheets together, and punching a handle portion and a carrier portion after the sheets are connected are entirely contrary to the teaching of Slomski. For this, the Examiner relies on the teaching of Broskow. However, Broskow also teaches that each sheet is used to form one half of a double layer handle portion and a separate and an outwardly depending carrier portion from the handle portion. Accordingly, there is not a “handle sheet and a carrier sheet” as recited in claim 1. Furthermore, there is no instruction or suggestion in either of the references as to how discrete sheets, one sheet only for the carrier and a second sheet only for the handle, can be first attached together and then punched in a manner such that a container holding portion is formed only in the carrier sheet to include apertures on both sides of the line of attachment, and a handle portion is formed only in the handle sheet. The two processes are very different, and produce carriers that are very different. How the two teachings can be merged is not apparent from the references, since in many ways the two methods taught thereby are contradictory.

Slomski teaches that when separate sheets are provided for the carrier and handle each must be punched separately before attachment. Broskow teaches that when two sheets are first attached together before punching each sheet then forms a part of the handle and a part of the carrier such that there is neither a discrete handle sheet nor a discrete carrier sheet as required by claim 1. Neither reference teaches or suggests how the two very different processes taught by Slomski and Broskow can be merged.

Neither reference alone or in combination teaches forming a carrier by attaching a discrete handle sheet and a discrete carrier sheet one to the other before forming the container

receiving apertures and the handle configuration. Neither reference teaches or suggests forming the handle portion and the carrier portion with similar shaped holes and apertures. Neither reference alone or in combination teaches or suggests a method for making a carrier whereby two sheets are first attached, then punched while forming the handle portion only in one of the sheets and the carrier portion only in the other of the sheets.

Contrary to the combined teachings of Slomski and Broskow, pending claim 1 as amended recites a method of making a container carrier in which a container holding portion is formed only in a carrier sheet and a handle portion is formed only in a handle sheet by positioning the handle sheet on at least a portion of the carrier sheet and cutting through overlying portions of the handle sheet and the carrier sheet and thereby forming holes in the handle sheet and a first row of container receiving apertures in the carrier sheet in overlying arrangement and in substantially the same configurations.

Further, the teaching of Broskow for punching multiple sheets at the same time is subject to disadvantages outlined in paragraph [8] of the present application, which are overcome by the present invention. When carrier loops are provided in each of two different superimposed sheets, as in the teaching of Broskow, the distance between outermost carrier loops on opposite sides is determined by the location of welds between the sheets. If the weld location varies, the distance between the loops also varies, and stretchability of the carrier can change making it difficult or impossible to apply the carrier onto a group of containers. When loops and handle portions are provided in the same sheet it is difficult to move the handle portions without distorting the loops, complicating use of the carrier. These factors can present problems when using automatic application equipment that attaches the carrier to a group of containers, particularly for large packages.

In contrast to the problems noted above, the invention as recited in appealed claim 1 provides a carrier with all container receiving loops formed in a single sheet. The distance between outermost loops is more easily controlled in the method of the present invention. Further, the method of the present invention provides carriers in which manipulation of the handle is less likely to cause detrimental distortion of the container receiving apertures. Accordingly, the method of the present invention provides carriers that facilitate application on containers by the use of automated machinery. The method provides carriers that are evenly balanced, easy to use and inexpensive to manufacture.

Thus, the present invention provides a method of making a container carrier which is not simply making a similar carrier by a different method, but instead uses a different method to manufacture a carrier that differs from carriers known in the prior art. The advantages of the present invention extend from manufacturing efficiency in both cost and handling, to improved efficiency and ease in applying the carrier to containers held thereby using automated equipment, and also to improved performance for the consumer by providing a well-balanced carrier and a carrier in which materials can be selected for optimal performance by separating the carrier portion from the handle portion. None of the prior art alone or in combination teaches a method for making and carriers made with structures exhibiting all of these advantages.

The method of the present invention provides advantages over the prior art in that the process is efficient by attaching the sheets one to the other and punching the sheets simultaneously. Since the container engaging apertures are provided only in one sheet, and the handle configuration is provided only in the other sheet, each of the sheets can be provided in material best suited for the function that it will perform. Since all container receiving apertures are formed in a single sheet, the distance between the outermost loops is more easily controlled than in processes making carriers in

which container receiving apertures are provided in each of the two sheets. Application of the carrier onto groups of containers by automated equipment is thereby facilitated since the weld between the sheets is not determinative for the spacing of the loops forming the apertures for the containers. The space remains the same regardless of variations in the positioning of the weld line. The method of the present invention further provides carriers in which manipulation of the handles does not easily distort the container receiving apertures, since the apertures and portions of the handle are not formed in the same sheet. Accordingly, the method of the present invention provides carriers that facilitate application on containers by use of automated machinery and provides carriers that are evenly balanced, easy to use and inexpensive to manufacture.

4. Claim 2 Recites An Invention Different From The Cited References:

Claim 2 depends from claim 1 and includes all of the limitations of claim 1 while adding further specificity to the invention recited in claim 1. Since claim one is believed to be allowable for the reasons stated above, it follows that claim 2 is also allowable.

5. Claim 3 Recites An Invention Different From The Cited References:

Regarding claim 3, the Examiner states that Slomski discloses “removing a portion of the handle sheet between the first and second spaced lines of attachment, see for example (Fig. 4; via by removing portions of handle 26 between two connecting lines 38), to define first and second handle sheet portions separate from each other (via sequence of handle sheet portions 26).” Appellants submit that Fig. 4 of Slomski shows a series of carriers being formed, each carrier having a handle portion and a container receiving portion. In contrast, the present pending claim recites a method to produce a carrier which, as recited in claim 3, includes two handle sheet portions for the

single carrier. Slomski does not teach a carrier having multiple handle sheet portions, only a series of carriers, with each carrier having a handle portion. Nothing in the teaching of Slomski suggests removing a portion of a handle sheet to provide first and second handle portions for a single carrier.

6. Claim 4 Recites An Invention Different From The Cited References:

Regarding Fig. 4, the Examiner states that it would have been obvious to modify the teaching of Slomski in view of Broskow by having a third row of apertures in the carrier sheet since it is a mere duplication of essential working parts. However, Appellants submit that claim 4 recites more than the mere addition of additional essential working parts. Claim 4 recites a method of making a carrier which includes three rows of container receiving apertures (not taught by either Broskow or Slomski) with first and second handle portions (not taught by either Slomski or Broskow) for a single carrier; and positional relationships between the handle portions and the rows of container receiving apertures (not taught by either Slomski or Broskow). The method recited in claim 4 is not mere duplications or repetitions of a step or feature, but instead a new and unique method for making a new and unique carrier with three rows of apertures. Nothing in the teachings of Slomski and Broskow suggests a method that includes forming a row of apertures between spaced lines of attachment of a carrier sheet and a handle sheet, and forming two other rows of apertures on opposite sides of the middle row of apertures and separated from the middle row by the spaced lines of attachment. The method produces carriers suitable for large packages in an efficient, cost effective manner, with the carriers including components particularly suited for the purpose and the carriers being well-balanced during assembly of a package of containers and the subsequent use thereof.

7. Claim 5 Recites An Invention Different From The Cited References:

With respect to claim 5 the Examiner states “Slomski discloses the step of forming holes in the handle sheet simultaneously with forming the apertures, see for example (Fig. 4).” However, as with the discussion of claim 1 above, Slomski does not teach forming any container receiving apertures of a carrier sheet or carrier portion in overlying arrangement with holes in a handle sheet or handle portion. Claim 5 recites forming overlying holes and the third row of apertures by cutting through the overlying sheets. Neither of the references teaches a method for forming a third row of container receiving apertures nor the specific step of forming container receiving apertures and holes in a handle sheet in overlying fashion as recited in claim 5.

8. Claim 6 Recites An Invention Different From The Cited References:

With respect to claim 6 the Examiner states “Slomski discloses a step of forming first and second handles in the handle sheet (via multiple forms of 26).” In short, the Examiner identifies first and second handles by referencing two different carriers. However, claim 6 recites first and second handles in the handle sheet of a single carrier, not for multiple carriers as taught by Slomski. Nothing in Slomski teaches multiple handles for a single carrier. Forming handles in different carriers is not similar to forming multiple handles in a single carrier. Claim 6 recites the formation of multiple handles in a single carrier, while Slomski teaches forming single handles in multiple carriers.

9. Claim 7 Recites An Invention Different From The Cited References:

Claim 7 depends from the entire line of dependent claims, including claims 1 through 6 and includes all of the limitations of claims 1-6 while adding further specificity to the invention recited in

claims 1-6. Since claims 1-6 are believed to be allowable for the reasons stated above, it follows that claim 7 is also allowable.

CONCLUSION

For the foregoing reasons, Appellants submit that claims 1-7 are neither taught nor suggested by the cited references, alone or in combination, and claims 1-7 are therefore in condition for allowance in their present form. Accordingly, Appellants respectfully request the Board to reverse the final rejections of the appealed claims.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

Claims 1-7 currently under appeal are as follows:

1. A method of making a container carrier, comprising steps of:
providing a handle sheet and a carrier sheet;
positioning the handle sheet on at least a portion of the carrier sheet;
connecting the handle sheet and the carrier sheet along a line of attachment;
forming a container holding portion only in the carrier sheet, including forming first and second rows of container receiving apertures in the carrier sheet on opposite sides of the line of attachment after said steps of positioning and connecting;
forming a handle portion only in the handle sheet, including forming holes in the handle sheet simultaneously with forming the first row of apertures; and
said step of forming holes in the handle sheet and said forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlying portions of said handle sheet and said carrier sheet and thereby forming said holes of the handle sheet and said first row of container receiving apertures of the carrier sheet in overlying arrangement and in substantially the same configurations one over the other.
2. The method of claim 1, said step of connecting performed by creating a substantially continuous weld between said sheets.
3. The method of claim 2, including connecting the handle sheet with the carrier sheet along first and second spaced lines of attachment; and thereafter removing a portion of the handle sheet between the first and second spaced lines of attachment to define first and second handle sheet portions separate from each other.
4. The method of claim 3, including forming the first row of apertures between one of the lines of attachment and an edge of the carrier sheet, forming the second row of apertures between the lines of attachment; and
forming a third row of apertures in the carrier sheet on an opposite side of the other of the lines of attachment from the second row of apertures.

5. The method of claim 4, including forming holes in the handle sheet simultaneously with forming the third row of apertures in overlying arrangement by cutting through overlying portions of said handle sheet and said carrier sheet.

6. The method of claim 5, including forming first and second handles in said handle sheet outwardly of the holes with respect to said first and second lines of attachment.

7. The method of claim 6, including forming a merchandising panel simultaneously with forming at least one of the first and second handles.

Allowed claims 8-13, not currently under appeal, are as follows:

8. A method of making a container carrier, comprising steps of:
providing a handle sheet and a carrier sheet;
positioning the handle sheet against the carrier sheet;
connecting the handle sheet and the carrier sheet along spaced first and second lines of attachment;
removing a strip of the handle sheet between the lines of attachment, leaving a first handle portion of the handle sheet outwardly from the first line of attachment and a second handle portion of the handle sheet outwardly from the second line of attachment;
forming a first row of container receiving apertures in the carrier sheet outwardly from the first line of attachment and simultaneously forming holes in the first handle portion of the handle sheet similarly shaped to the first row of apertures, said step of forming holes in the first handle portion of the handle sheet and said forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlying portions of the carrier sheet and the handle sheet to form the holes in the first handle portion and the first row of apertures in overlying arrangement and of substantially the same configurations;
forming a second row of apertures in the carrier sheet between the first and second lines of attachment; and
forming a third row of container receiving apertures in the carrier sheet outwardly from the second line of attachment and simultaneously forming holes in the second handle portion of the handle sheet similarly shaped to the third row of apertures, said step of forming holes in the second handle portion of the handle sheet and said forming the third row of container receiving apertures in the carrier sheet being performed by cutting through overlying portions of the carrier sheet and the handle sheet to form the holes in the second handle portion and the third row of apertures in overlying arrangement and of substantially the same configurations;
said forming steps being performed after said steps of positioning and connecting.
9. The method of claim 8, said forming steps performed by die cutting.

10. The method of claim 8, including providing the handle sheet wider than the carrier sheet, positioning the sheets with first and second margin portions of the handle sheet extending beyond the carrier sheet on opposite sides, and forming handles in the margin portions of the handle sheet outwardly of the carrier sheet.

11. The method of claim 10, said forming steps performed by die cutting.

12. The method of claim 8, including forming a handle in the handle sheet and simultaneously forming a merchandising panel in the carrier sheet configured substantially the same as the handle.

13. The method of claim 8, including providing the handle sheet of material different from the material of the carrier sheet.

IX. EVIDENCE APPENDIX

No additional evidence is being provided by the Appellants at this time.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings are known to the Appellants.